REBUTTALS TO ANTI-AMERICAN BAR INDOCTRINATED POSITIONS:

COMMON LAW v. CIVIL LAW

By Brent Williams; (brief history)

Two fundamental traditions of law and government are active among humanity, each manifesting contrary ideals: the common law and the civil law. The common law rests upon justice administered by scriptural principles that presuppose and guard against the inherent imperfections of human reason. The civil law, on the other hand, justifies its methods by presupposing and appealing to man's notions of perfected reason. The common law tradition governs only a handful of countries and is fundamentally consonant with Scripture, acknowledging the divine eternality of law as the measure of all things. The civil law tradition, on the other hand, governs most modern nations and is fundamentally Babylonian trusting human reason as the worthy measure of all things.

The common law tradition recognizes the necessity of human administration of law and government while providing safeguards against man's weaknesses. The common law, however, does not teach that we elect or appoint men to govern us. On the contrary, the eternal law is our governor and the governor of those elected and appointed. Therefore, the duties of those administering government are purely ministerial: God binds magistrates and other officials to remain consonant with His character in word and deed; to arrogate more to elected officials is tantamount to idolatry. The common law has fashioned its methods to seek and *derive* law from the revealed mind of God. By contrast, civil law's ultimate source is the mind of man. In the common law tradition, all law is *derivative:* men must derive law from God. On the other hand, under the traditional civil law, men must make the law: i.e., law is a product of the human mind, un-derived from any source superior to humanity.

Because the common law focuses on *relationships,* applicable common law standards are determined by first recognizing the kind of relationship that exists between contending parties. Once this question of fact is determined, out of this relationship arises a certain level of rights and responsibilities. Civil law, on the other hand, is primarily determined by ascertaining the will of the state as expressed in legislation. The question of relationship determines law: rights and responsibilities concerning life, liberty, and property. If the will of the state is the foremost consideration, however, private and individual determination of relationships to choose one's relationships and freedom to define one's associations by delineating one's commitments contracts are forfeited. Therefore, common law is not made, but discovered by first recognizing the duty demanded by different categories of relationships; while civil law is the decreed by will of men, or a man, as the embodiment of the state. In the common law tradition, law is of eternal origin; therefore, all men and the state are subject to it. **By contrast, the civil law tradition holds that because law is the will of man as expressed in the state's legislation, law may change as man's desire and will changes; further, since the state is the source of the law, the law is subject to the state and not the state to the law**. Further, any freedom of private relationships such as association or contract is subject to impairment of the legislative will.

FEEBLE ARGUMENTS FROM THE STATUS QUO

Status quo - No legal authority**:** "*This is a rogue band of citizens with no legal authority*," said Wes Oliver, Associate Professor and director of the criminal justice program at Duquesne University School of Law. "*To what extent there was ever a common law grand jury system that was self-creating, there no longer is*." (No supporting authorities offered)

REBUTTAL –

In the Supreme Court case of United States v. Williams, 112 S.Ct. 1735, 504 U.S. 36, 118 L.Ed.2d 352 (**1992**), Justice Antonin Scalia, writing for the majority, confirmed that the American grand jury is neither part of the judicial, executive nor legislative branches of government, but instead belongs to the people. It is in effect a fourth branch of government "governed" and administered to directly by and on behalf of the American people, and its authority emanates from the Bill of Rights.

JUSTICE ANTONIN SCALIA WENT ON TO SAY: (in U.S v. Williams) **"***The grand jury is mentioned in the Bill of Rights, but not in the body of the Constitution. It has not been textually assigned, therefore, to any of the branches described in the first three Articles.* ***It is a constitutional fixture in its own right***". United States v. Chanen, 549 F.2d 1306, 1312 (CA9 1977) (quoting Nixon v. Sirica, 159 U.S.App. D.C. 58, 70, n. 54, 487 F.2d 700, 712, n. 54 (1973)), cert. denied, 434 U.S. 825, 98 S.Ct. 72, 54 L.Ed.2d 83 (1977).; United States v. John H. Williams, Jr.; 112 S.Ct. 1735; 504 U.S. 36; 118 L.Ed.2d 352; No. 90-1972.

"*All laws, rules and practices which are repugnant to the Constitution are null and void*" [Marbury v. Madison, 5th US (2 Cranch) 137, 180]

"*There can be no limitation on the power of the people of the United States (of America). By their authority the State Constitutions were made and by their authority the Constitution for the United States (of America) was established…*" Hauenstein vs. Lynham (100 US 483).

"*The United States Supreme Court declares that the "Sovereignty" remains with the "people" and resides with the "people*"…Yick Wo vs. Hopkins and Woo Lee Hopkins (118 US 356).

"*No action can be taken against a sovereign in the non-constitutional courts of either the United states or the state courts and any such action is considered the crime of Barratry*[1]*. Barratry is an offense at common law*." State vs. Batson 17 S.E.2d 511. 512,513.

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[1] **BARRETOR.** In criminal law. A common mover, exciter, or maintainer of suits and quarrels either in courts or elsewhere in the country; a disturber of the peace who spreads false rumors and calumnies, whereby discord and disquiet may grow among neighbors. Co.Litt. 368. One who frequently excites and stirs up groundless suits and quarrels, either at law or otherwise. Mate v. Batson, 220 N.C. 411, 17 S.E.2d 511, 512, 513. BARRETRY. In criminal law. The act or offense of a barretor, *(q. v.;)* usually called "common barretry." 4 Steph.Comm. 262.

Status quo - Common people are not capable of making such decisions: (No supporting authorities offered)

REBUTTAL –

“Whenever people are well-informed they can be trusted with their own government” - **Thomas Jefferson …** “The constitutions of most of our states assert that **all power is inherent in the people**; that they may exercise it by themselves, in all cases to which they think themselves competent” - **Thomas Jefferson, letter to John Cartwright; June 5, 1824;** "Trust in the jury is, after all, one of the cornerstones of our entire criminal jurisprudence, and if that trust is without foundation we must re-examine a great deal more than just the nullification doctrine." - **Judge David L. Bazelon**

Status quo - Legal experts say that in 1946, the Federal Rules of Criminal Procedure were established, doing away with the common law grand jury model. (No supporting authorities offered)

REBUTTAL –

“*The Court of Appeals' rule would neither preserve nor enhance the traditional functioning of the grand jury that the "common law" of the Fifth Amendment demands*” **- 1990, U.S v. Williams**

“*The power of grand juries to inquire into the wilful misconduct in office of public officers, and to find indictments or to direct the filing of information's in connection with such inquiries, shall never be suspended or impaired by law*.” **New York Constitution Article 1 §6**

Status quo - Grand juries must be approved by the courts.

REBUTTAL –

“*The grand jury is an institution separate from the courts, over whose functioning the courts do not preside, we think it clear that, as a general matter at least, no such supervisory judicial authority exists*” **- 1990, U.S v. Williams**

JUSTICE ANTONIN SCALIA SAID: “*In fact the whole theory of its function is that it belongs to no branch of the institutional government, serving as a kind of buffer or referee between the Government and the people*”. *Stirone v. United States,* 361 U.S. 212, 218, 80 S.Ct. 270, 273, 4 L.Ed.2d 252 (1960); *Hale v. Henkel,* 201 U.S. 43, 61, 26 S.Ct. 370, 373, 50 L.Ed. 652 (1906); United States v. John H. Williams, Jr.; 112 S.Ct. 1735; 504 U.S. 36; 118 L.Ed.2d 352; No. 90-1972.

Status quo - There is no statute or procedural rule that allows citizens to convene grand juries. (No supporting authorities offered)

REBUTTAL –

There is no statute or procedural rule that prevents people from convening grand juries.

JUSTICE ANTONIN SCALIA SAID: "*The grand jury requires no authorization from its constituting court to initiate an investigation,*" **see *Hale, supra,* 201 U.S., at 59-60, 65, 26 S.Ct., at 373, 375,).; United States v. John H. Williams, Jr.; 112 S.Ct. 1735; 504 U.S. 36; 118 L.Ed.2d 352; No. 90-1972.**

"*The grand jury's functional independence from the judicial branch is evident both in the scope of its power to investigate criminal wrongdoing, and in the manner in which that power is exercised. "Unlike [a] [c]ourt, whose jurisdiction is predicated upon a specific case or controversy, the grand jury 'can investigate merely on suspicion that the law is being violated, or even because it wants assurance that it is not.'"* ***United States v. R. Enterprises,* 498 U.S. ----, ---- , 111 S.Ct. 722, 726, 112 L.Ed.2d 795 (1991) (quoting *United States v. Morton Salt Co.,* 338 U.S. 632, 642-643, 70 S.Ct. 357, 364, 94 L.Ed. 401 (1950)). *Blair v. United States,* 250 U.S. 273, 282, 39 S.Ct. 468, 471, 63 L.Ed. 979 (1919).; United States v. John H. Williams, Jr.; 112 S.Ct. 1735; 504 U.S. 36; 118 L.Ed.2d 352; No. 90-1972.**

Status quo - Unless common law grand juries are officially recognized by the courts, prosecutors offered presentments or individuals subpoenaed by the self-formed grand juries would not be legally compelled to cooperate. (No supporting authorities offered)

REBUTTAL –

Prosecutors are not offered presentments; presentments are filed with the Supreme Court Chief Clerk and once filed cannot be removed, anyone interfering with an official proceeding commits a crime under US codes.

> USC 18 §2076 - Clerk is to file: Whoever, being a clerk willfully refuses or neglects to make or forward any report, certificate, statement, or document as required by law, shall be fined under this title or imprisoned not more than one year, or both.
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> USC 18 §2071 - Whoever willfully and unlawfully conceals, removes, mutilates, obliterates, or destroys, or attempts to do so, documents filed or deposited with any clerk or officer of any court, shall be fined or imprisoned not more than three years, or both.
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> 18 USC §1512b - Whoever knowingly uses intimidation, threatens, or corruptly persuades another person, or attempts to do so, or engages in misleading conduct toward another person, with intent to - (1) influence, delay, or prevent ... an official proceeding; (2) cause or induce

any person to - (a) withhold ... a document, or other object, from an official proceeding; (b) alter, destroy, mutilate, or conceal an official proceeding; … shall be fined under this title or imprisoned not more than 20 years, or both.

THE FOX & THE HEN HOUSE

If the government can select the jurors [like they do now], it will, **of course**, select those whom it supposes will be favorable to its enactments [like they do now]. And an exclusion of *any* of the freemen from eligibility is a *selection* of those not excluded [like they do now]. It will be seen, from the statutes cited, that the most absolute authority over the jury box that is, over the right of the people to sit in juries has been usurped by the government; **Lysander Spooner, Trial by Jury, page 92, 1852**

“Men must be governed by God or they will be ruled by tyrants”. **William Penn**

Amendment V – “No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury...” It is in effect a fourth branch of government "governed" and administered to directly by and on behalf of the American people.

"...the jury shall have the right to determine the law and the fact". **New York Constitution Article 1. §8** “As understood at common law and as used in constitutional provision, "jury" imports body of twelve men.” [**State v. Dalton, 206 N.C. 507, 174 S.E. 422, 424; People ex rel.Cooley v. Wilder, 255 N.Y.S. 218, 222, 234 App.Div. 256; Hall v. Brown, 129 Kan. 859, 284 P. 396.**]

"The **jury has a unalienable right** to judge both the law as well as the fact in controversy." **John Jay, 1st Chief Justice United States Supreme Court, 1789**.

"The **jury has the right** to determine both the law and the facts." **Samuel Chase, U.S. Supreme Court Justice 1796, Signer of the unanimous Declaration**

"The **jury has the power** to bring a verdict in the teeth of both law and fact." **Oliver Wendell Holmes, U.S. Supreme Court Justice, 1902**.